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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,624	06/22/2000	David Francis Gavin	8135&	8433

27752 7590 09/10/2002

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EXAMINER

DEWITTY, ROBERT M

ART UNIT PAPER NUMBER

1616

DATE MAILED: 09/10/2002 16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/599,624

Applicant(s)

GAVIN ET AL.

Examiner

Robert M DeWitty

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-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 26, 27, 31-35 and 39-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25, 28-30, 36-38 and 42-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-50 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-50 are pending in the instant application. Acknowledgment is made of Applicant's amendment, response and election of invention.

Election/Restrictions

1. Claims 26-27, 31-35 and 39-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 15.

Acknowledgement is also made to the election of zinc salts, zinc pyrrithione, anionic surfactants, and cationic polymers.

Applicant has traversed the restriction requirement on the basis that it would not be unduly burdensome on the examiner to search all the inventions. However, as stated on the restriction requirement, the inventions (for example, Groups I and II) can be used for different purposes including anti-dandruff and shampoo. Such different inventions are contained in various classes and subclasses requiring a burdensome search. Thus, the requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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2. Claims 1-25, 28-30, 36-38, 42-50 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has claim 1 to include the limitation "...wherein the pH of the composition is greater than 7 when the metal ion source is a zinc salt." Applicant asserts that the instant specification at page 7, lines 15-17 teach the limitation, however the specification at that location is drawn to an anti-dandruff shampoo. Further, the specification teaches from about 2 to 10, rather than a pH greater than 7. Therefore, a pH greater than 7 is not supported by the instant specification.

Claim 47 includes the limitations from about 1.5% to 10% (of a metal ion source), however the specification at page 5, line 33 to page 6 lines 1-2 teaches from about 0.01% to 5%. Therefore, this limitation is not supported by the instant specification.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-25, 28-30, 36-38, 42-46 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wiese (U.S. Pat. No. 5,227,156).

Wiese relates to the activity of anti-dandruff shampoo containing pyrithione and a

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stabilizer. Wiese teaches that zinc pyrithione reacts adversely with some thiazolinone preservatives, which reduces its activity and its ability to prevent or reduce microbiological contamination (col. 1, lines 20-24). Wiese develops shampoo comprised of from about 0.1% to 2.0% zinc pyritinone, from about 0.001% to about 1.0% of a stabilizer comprising a zinc compound, and other ingredients (col.1, lines 35-44). Suitable stabilizers are zinc compounds such as zinc salts of an organic acid, zinc salts of an inorganic acid, zinc oxide, zinc sulfates, zinc hydroxide, zinc acetate, and zinc chloride (col. 3, lines 38-45). The shampoo can also contain surfactants.

Response to Arguments

4. Applicant's arguments filed 5/23/02 have been fully considered but they are not persuasive.

Applicant asserts that the amended claim 1 is not made obvious by Wiese because the pH of the present invention is greater than 7. The amendment is not supported by the instant specification. Wiese teaches the shampoo can have a neutral pH. Applicant also asserts that Wiese is drawn to a zinc compound for the purpose of stabilizing a thiazoline preservative. However, Wiese clearly teaches the preparation of a shampoo containing the ingredients (see Example 1).

The rejection is thus maintained.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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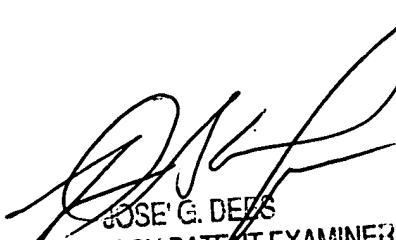
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M DeWitty whose telephone number is 703-308-2411. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4527. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

RMD
September 9, 2002


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
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